IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 6-9-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1062 of 2007 & M.P.No.3 of 2007

M. Gunaseelan ... Appellant

Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai - 104.

2. The Management,
Lucas TVS Ltd.,
Padi,
Chennai - 50. ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.9262 of 1997 dated 6.1.2006. Petition presented under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the file of the 1st respondent in I.D.No.697/91 dated 20.12.1995 and to quash the same.

For Appellant : Mr.S.Kanagasabai Moses

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.9262 of 1997 dated 6.1.2006, dismissing the writ petition filed by the appellant herein.

2. The case of the appellant/writ petitioner is that he was employed as Cleaner in the Canteen in the second respondent Company from the year 1972 on temporary basis and he was made permanent on 30.12.1986. On 16.2.1990, a charge memo was issued to the petitioner under clause 13 (4) of the Certified Standing Orders of the Company stating that the petitioner has stolen a bicycle belonging to a co-employee by name Santhanakrishnan on 14.2.1990 at about 1.30 a.m. Petitioner submitted his explanation on 21.2.1990 and denied the charges. Another charge memo was issued on 8.3.1990 alleging that the appellant/writ petitioner threatened the co-employee, for which also the appellant/writ petitioner

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submitted his explanation on 9.3.1990 and denied the charge. Having not satisfied with the explanations, a domestic enquiry was conducted in respect of the said charges. The management examined five witnesses on its side and the appellant was also examined. Appellant was given the assistance of a co-employee. On 26.4.1990, the Enquiry Officer submitted his report holding that both the charges levelled against the appellant/writ petitioner have been proved and based on the proven charges, appellant/writ petitioner was dismissed from service by the second respondent from 6.7.1990. The appellant/writ petitioner raised a dispute as the conciliation efforts failed, the appellant/writ petitioner moved the Labour Court under Section 2A(2) of the Industrial Disputes Act, 1947, and the same was tried as I.D.No.697 of 1991. In the claim petition the appellant prayed for reinstatement with backwages. The Labour Court found that the punishment imposed against the appellant was excessive and the theft of the cycle of a co-employee is an ignorable offence and ordered to pay Rs.25,000/- as lumpsum payment in lieu of reinstatement and backwages. Being aggrieved by the said award dated 20.12.1995 passed by the Labour Court, the appellant filed W.P.No.9262 of 1997 before this Court. The said writ petition was dismissed by the learned Single Judge by order dated 6.1.2006, as against which the present writ appeal has been preferred.

3. The learned counsel appearing for the appellant/writ petitioner at the time of arguments submitted that the writ petition filed by the appellant was earlier allowed by the learned single Judge on 21.9.2004 and on appeal it was set aside on the ground that the second respondent Management was not heard while passing the order and the Division Bench remitted the matter for passing fresh orders and after remittance, now the writ petition is dismissed by order dated 6.1.2006 and the same is unsustainable. The learned counsel also submitted that the appellant/writ petitioner has taken the cycle of a co-employee only on mistaken identity and the same was handed over to its owner/co-employee on the next day and therefore the occurrence having took place on mistake of fact, without any evil motive, the management ought not to have framed the charge and dismissed the appellant/writ petitioner from service.

4. We have considered the submissions of the learned counsel appearing for the appellant along with the earlier orders passed by this Court in this matter. Initially, the writ petition was allowed by the learned single Judge on 21.9.2004 and at that time, the name of the counsel for the management was not printed in the cause list and therefore, the learned counsel for the management could not be present. The said fact was proved before the Division Bench in W.A.No.557 of 2005 and the Division Bench by Judgment dated 17.8.2005 held that the earlier order passed in the writ petition on 21.9.2004 without printing the name of the counsel for the second respondent, who filed vakalat, in the cause list, is a nullity and therefore set aside the said order and remitted the matter back to the single Judge for fresh disposal after hearing the parties. In view of the said order passed by the Division Bench in W.A.No.557 of 2005 dated 17.8.2005, there is no substance in the arguments

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advanced by the learned counsel appearing for the appellant/writ petitioner that there is already an order of reinstatement.

5. Insofar as the merits of the case is concerned, the charges levelled against the Appellant/writ petitioner are one of theft of a bicycle belonging to another employee by name G.Santhanakrishnan and the second charge is that the appellant threatened the security watchmen Manickam and V.M.Krishnan. The management examined five witnesses to prove the said charges. The petitioner also participated in the enquiry and he was also given assistance of a co-employee. Enquiry report was submitted on 26.4.1990 holding that the charges are proved. Based on the proved charges, petitioner was dismissed from service on 6.7.1990. The matter was taken to the Labour Court and the appellant marked 14 documents to substantiate his case. However, he did not let in oral evidence. The second respondent management produced 25 documents. On appreciation of the material documents and facts, the Labour Court thought fit that reinstatement cannot be ordered and only a lumpsum compensation of Rs.25,000/- can be ordered to the appellant/writ petitioner. The learned single Judge confirmed the said award and dismissed the writ petition.

6. The argument of the learned counsel for the appellant/writ petitioner that the bicycle of the said Santhanakrishnan was taken by the appellant/writ petitioner on mistaken identity, can be accepted only if his cycle was found in the row, but that was not the fact. The said Santhanakrishnan also gave complaint about the missing of his bicycle on 13.2.1990, which was marked as Ex.W-6 before the Labour Court. Hence the findings given by the Enquiry Officer based on which the appellant/writ petitioner was dismissed, cannot be treated as perverse finding. The Enquiry Officer as well as the Labour Court found that the charge of threatening of officials of the second respondent Company by the appellant/writ petitioner was proved and the said finding of fact has not been interfered by the learned single Judge.

7. We are of the view that the findings of fact arrived at by the Enquiry Officer and the Labour Court cannot be interfered with in writ petition filed under Article 226 of the Constitution of India, unless it is established that the said findings are perverse in nature. Theft of a bicycle from the Cycle Stand of the second respondent Company, committed by the appellant/writ petitioner is a very serious charge. Similarly, threatening the security and another person which was also proved is in violation of the Standing Orders - paragraphs 13(4), (8) & (12). The Labour Court still considered the matter and exercised its power under section 11(A) of the Industrial Disputes Act, 1947, and awarded a sum of Rs.25,000/- as lumpsum compensation. The same is upheld by the learned single Judge.

8. The power of the Court to interfere with the punishment imposed is considered by the Supreme Court in the decision reported in (2006) 1 SCC 63 (Karnataka Bank Ltd. v. A.L.Mohan Rao) In paragraph 6 of the Judgment the Supreme Court held as follows:

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> "..... It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment."

In this case, we are of the view that since the charges levelled against the appellant/writ petitioner are proved, the appellant is not entitled for reinstatement or any other relief other than the one ordered by the Labour Court.

9. There is no merit in the writ appeal and the same is dismissed in limini. No costs. Connected miscellaneous petition is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr

To

The Presiding Officer,
Principal Labour Court,
Chennai - 104.

W.A.No.1062 of 2007

MDR(CO)
RVL 12.09.2007

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